

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Steve Dispensa et al.  
Application No.: 09/981,977  
Filed: 10-17-2001  
For: PROBE DEVICE FOR TESTING A BROADBAND WIRELESS SYSTEM

Confirmation No.: 1819  
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Examiner: Nawaz, Asad M.

**Mailstop: Appeal Brief - Patents**  
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**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

A notification of non-compliant appeal brief dated October 23, 2006 (hereinafter “the notification”) indicates that the appeal brief filed July 12, 2006, for the above-referenced application (hereinafter, “the appeal brief”) “does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal...” (Section 4 of the notification.) More specifically, the notification indicates that “[t]he section [entitled “Summary of Claimed Subject Matter”], as currently written, simply recite[s] the limitations in the claims without any explanation whatsoever. Appropriate correction is required.” (Section 10 of the notification.)

In response, a replacement “Summary of Claimed Subject Matter” for the appeal brief is submitted below in accordance with MPEP § 1205.03. The replacement section provides further examples and discussion regarding the subject matter of the independent claims. In addition, possible advantages provided by one or more embodiments of the invention are presented therein.

### **Summary of Claimed Subject Matter**

Independent claim 1 provides a method 900 of operating a probe device (such as the sector probe 695 shown in Fig. 8) for testing a broadband wireless system (such as the broadband wireless system 100 of Fig. 1). (Page 29, lines 17 and 18; page 31, lines 5-13; and Figs. 1, 8 and 9.) In the method 900, an instruction is received into the probe device 695 through a wireless broadband router 690 coupled with the broadband wireless system 100 to execute a plurality of tests. (Page 31, lines 6 and 7; page 30, lines 29 and 30; Fig. 8; and operation 902 of Fig. 9.) In one example, the wireless broadband router 690 is configured to communicate wirelessly with a head end 500 of the broadband wireless system 100 through a base antenna 160, as shown in Fig. 1. (Page 15, lines 15-17; and page 5, lines 1-3.) The probe device 695 and the wireless broadband router 690 are located on a customer premises 600. (Figs. 1 and 8; and page 29, lines 19-21.) The plurality of tests is executed to measure performance of the broadband wireless system 100 based on the instruction. (Page 31, lines 7-9; and operation 904 of Fig. 9.) Each test may be any test or script configured to measure performance of a communication network. (Page 30, lines 25 and 26.) Such tests may include, for example, a web-surfing test, a bulk file transfer script, a ping test to measure delay, and a raw channel capacity test. (Page 30, lines 26-28.) Performance information is determined from the plurality of tests. (Page 31, lines 9 and 10; and operation 906 of Fig. 9.) Examples of the performance information include delay, download speed, and dropped data packets. (Page 32, lines 28-30.) The performance information is then stored in a memory 830 of the probe device 695. (Page 31, lines 10 and 11; and operation 908 of Fig. 9.)

Independent claim 21 provides a software product for operating a probe device (e.g., the sector probe 695 of Fig. 8) for testing a broadband wireless system (e.g., the system 100 of Fig. 1). The product includes probe device software operational to perform the method 900 described above, as well as a software storage medium operational to store the probe device software.

Independent claim 41 provides a probe device (e.g., the sector probe 695 of Fig. 8) for testing a broadband wireless system (e.g., the system 100 of Fig. 1). The probe device 695 includes an interface 810 configured to transfer an instruction into the probe device 695 through a wireless broadband router 690 coupled with the broadband wireless system 100 to execute a plurality of tests. (Page 31, lines 6 and 7; page 30, lines 29 and 30; Fig. 8; and operation 902 of

Fig. 9.) Also included is a processor 820 connected to the interface 810 and configured to receive the instruction, and execute the plurality of tests to measure performance of the broadband wireless system 100 based on the instruction. (Page 31, lines 7-9; Fig. 8; and operation 904 of Fig. 9.) The processor 820 is also configured to determine performance information, such as that described above, from the plurality of tests (page 31, lines 9 and 10; Fig. 8; and operation 906 of Fig. 9), and to store the performance information in a memory 830 of the probe device 695 (page 31, lines 10 and 11; Fig. 8; and operation 908 of Fig. 9). In addition, the probe device 695 and the wireless broadband router 690 are located on a customer premises 600. (Fig. 8; and page 29, lines 19-21.)

At least two potential benefits arise from various embodiments of the invention. For one, with the probe device 695 being located on the customer premises 600 along with the broadband wireless router 690, the performance of the broadband wireless system 100 is measured from the perspective of the customer (page 29, lines 17-21), thus providing a more accurate description of the overall communication experience of the user. Secondly, the use of the probe device 695 to execute a number of tests that actively generate network traffic for measuring system performance obviates the need to passively monitor network traffic (page 29, lines 22-25), which may not provide all of the performance information desired, or may not provide such information in a timely manner. Such a probe device 695 is contrasted with prior broadband wireless systems, which typically concentrate on collecting, storing and reporting fault information rather than performance information. (Page 8, lines 1-6.)

Conclusion

In view of the foregoing replacement summary, the Assignee submits to the Board of Patent Appeals and Interferences (hereinafter "the Board") that the appeal brief now complies with all provisions of 37 C.F.R. § 41.37. Further, in light of the appeal brief, the Assignee submits to the Board that the final rejection of claims 1, 4-21, 24-41 and 44-60 of the present application is erroneous, and respectfully requests its reversal.

The Assignee believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

Date: 11/6/06



**SIGNATURE OF PRACTITIONER**

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